

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

MARIA GARCIA,

Plaintiff,

-against-

**ANSWER**

RESIDENCE INN BY MARRIOTT FISHKILL,  
MARRIOTT INTERNATIONAL, INC., and  
HARD EIGHT FISHKILL, L.P., aka HARD  
EIGHT FISHKILL,

Civil Action No. 11-cv-5861

Defendants.

---

Defendants, Residence Inn By Marriott, LLC (improperly named herein as Residence Inn By Marriott Fishkill), Marriott International, Inc. and Hard Eight Fishkill, L.P., aka Hard Eight Fishkill, by and through their attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, as and for an Answer to plaintiff's Complaint, hereby state as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "1" of the Complaint and refer all questions of law to this Honorable Court.

2. Deny the allegations contained in Paragraph "2" of the Complaint and refer all questions of law to this Honorable Court.

3. Deny the allegations contained in Paragraph "3" of the Complaint and refer all questions of law to this Honorable Court.

4. Deny the allegations contained in Paragraph "4" of the Complaint and refer all questions of law to this Honorable Court.

5. Deny the allegations contained in Paragraph “5” of the Complaint and refer all questions of law to this Honorable Court.

6. Deny the allegations contained in Paragraph “6” of the Complaint and refer all questions of law to this Honorable Court.

7. Deny the allegations contained in Paragraph “7” of the Complaint and refer all questions of law to this Honorable Court.

8. Admit that Marriott International, Inc. is a foreign corporation conducting business within the State of New York, Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph “8” of the Complaint and refer all questions of law to this Honorable Court.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “9” of the Complaint and refer all questions of law to this Honorable Court.

10. Deny the allegations contained in Paragraph “10” and refer all questions of law to this Honorable Court.

11. Admit the that Defendant Hard Eight Fishkill, L.P. aka Hard Eight Fishkill owns the property located at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York and Deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph “11” of the Complaint and refer all questions of law to this Honorable Court.

12. Deny the allegations contained in Paragraph “12” of the Complaint and refer all questions of law to this Honorable Court.

13. Deny the allegations contained in Paragraph "13" of the Complaint and refer all questions of law to this Honorable Court.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "14" of the Complaint and refer all questions of law to this Honorable Court.

15. Deny the allegations contained in Paragraph "15" of the Complaint.

16. Admit that Defendant Hard Eight Fishkill, L.P. aka Hard Eight Fishkill owns the property located at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York and Deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph "11" of the Complaint and refer all questions of law to this Honorable Court.

17. Deny the allegations contained in Paragraph "17" of the Complaint and refer all questions of law to this Honorable Court.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "18" of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "19" of the Complaint and refer all questions of law to this Honorable Court.

20. Deny the allegations contained in Paragraph "20" of the Complaint and refer all questions of law to this Honorable Court.

21. Deny the allegations contained in Paragraph "21" of the Complaint and refer all questions of law to this Honorable Court.

22. Deny the allegations contained in Paragraph “22” of the Complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “23” of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “24” of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “25” of the Complaint and refer all questions of law to this Honorable Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

26. Any and all risks, hazards, defects and dangers alleged are of an open, obvious and apparent nature and were known or should have been known to the plaintiff herein, and the plaintiff willingly and voluntarily assumed all such risks, hazards, defects and dangers.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

27. Upon information and belief, plaintiff’s economic loss, if any, was or will be replaced or indemnified, in whole or in part, from collateral sources, and answering defendants are entitled to have this Court consider the same in determining such special damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

28. Upon information and belief, the injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom answering defendants neither had nor exercised control.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

29. Plaintiffs failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in the plaintiff's complaint.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

30. The plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

31. In the event any co-defendants or other tortfeasors settle with the plaintiff, as a result of the damages alleged in this action or if the plaintiff discontinues against any co-defendants answering defendants reserve their rights under General Obligations Law Section 15-108 and in general to prove any and all negligence on the part of said settling co-defendants and/or tortfeasors at a trial of this action.


**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

32. The injuries, losses and damages and occurrences alleged in the Complaint were the result of an independent and intervening and superseding cause or causes over which answering defendants had no control or right of control and in no way participated.

**WHEREFORE**, defendants, Residence Inn By Marriott, LLC (improperly named herein as Residence Inn By Marriott Fishkill), Marriott International, Inc. and Hard Eight Fishkill, L.P., aka Hard Eight Fishkill, demand judgment dismissing the Complaint herein, together with the costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

Dated: August 25, 2011  
Albany, New York

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:   
THERESA B. MARANGAS, ESQ.  
*Attorneys for Defendants Residence Inn by  
Marriott, LLC, Marriott International, Inc.  
and Hard Eight Fishkill, L.P. aka Hard  
Eight Fishkill*  
677 Broadway  
Albany, New York 12207  
(518) 449-8893  
File No.: 00805.00076

TO: SCHONBERG LAW OFFICES  
OF THE HUDSON VALLEY, P.C.  
*Attorneys for Plaintiff*  
209 Route 32, P.O. Box 217  
Central Valley, New York 10917  
(845) 928-3030


**ATTORNEY VERIFICATION**

The undersigned, an attorney admitted to practice in the courts of New York State shows: deponent is a partner with the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, the attorneys for the defendants, Residence Inn by Marriott Fishkill, Marriott International, Inc. and Hard Eight Fishkill, L.P. aka Hard Eight Fishkill, in the within action; has read the foregoing Answer and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by said defendants in that no defendant with full knowledge of the pertinent facts resides or maintains a place of business in the County of Albany where your deponent's office is located.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: information and material contained in deponent's file.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: August 25, 2011

  
THERESA B. MARANGAS